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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/446,550
Filing Date: December 22, 1999
Appellant(s): ISELE ET AL.

Charles R. Ware
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3 March 2008 appealing from the Office action mailed 1 May 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,628,737	DOBRIN et al.	5-1997
5,865,926	WU et al.	2-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-15 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobrin et al. (5,628,737) in view of Wu et al. (5,865,926).

Dobrin discloses all aspects of the claimed invention with the exception of a particulate filler material imbedded in the polymeric film layer. Dobrin discloses an absorbent article 20, as shown in figure 2, comprising a core region 74, and a chassis region 76 surrounding the core region 74. The article 20 further comprises a laminate 95, as shown in figure 3, which extends into both the core region 74 and the chassis region 76 to form a core backsheet and a chassis backsheet. The laminate 95 comprises a polymeric film layer 26, as described in column 6, lines 42-43, and a fibrous layer 90, as described in column 9, lines 51-52. The laminate 95 is a breathable, unitary layer. The laminate 95 comprises apertures 84 in the chassis region 76, giving the chassis region 76 a higher degree of breathability than the core region 74, and therefore the MVTR value of the core region 74 is lower than that of the chassis region 76.

Wu discloses a breathable laminate for use in an absorbent article, as disclosed in column 4, lines 37-42, comprising a polymeric film layer and a fibrous layer, as described in column 2, lines 60-64. The polymeric film comprises a polymeric matrix and a particulate filler material, as disclosed in column 3, lines 2-17. The breathability of the laminate is enhanced by the formation of cracks around the particulate filler material, as disclosed in column 3, lines 19-21. The laminate is passed through a pair

of rolls comprising ridges and grooves which provides a multiplicity of corrugations to the laminate, as disclosed in column 4, lines 51-65, and shown in figure 2.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the laminate of Dobrin using the polymeric film layer of Wu to increase the breathability of the laminate.

With respect to claim 2, Dobrin discloses the polymeric film layer 26 is wider than the fibrous layer 90, as described in column 10, lines 7-9.

With respect to claims 3 and 4, Wu discloses a MVTR of at least 500 g/24hr/m^2, as described in Table II.

With respect to claims 5 and 6, Dobrin discloses all aspects of the claimed invention but remains silent as to how much greater the transmission rate of the chassis region is than the transmission rate of the core region. The chassis region is apertured to increase its breathability, and therefore has a higher transmission rate than the core region.

With respect to claim 7, Wu discloses the filler material is calcium carbonate, as described in column 3, lines 14-17.

With respect to claim 8, Wu discloses the laminate has a basis weight of about 64 gsm (Table II), and the nonwoven web has a basis weight of about 20 gsm (column 4, line 29), and therefore the basis weight of the polymeric layer is less than 50 gsm.

With respect to claim 9, Wu discloses the laminate has a basis weight of less than 70 gsm, as disclosed in Table II.

With respect to claim 10, Dobrin discloses the fibrous layer 90 is a non-woven web, as described in column 9, line 52, and Wu discloses a non-woven web in column 4, lines 10-12.

With respect to claims 11 and 13, Wu discloses combining the polymeric layer and the fibrous layer by thermobonding and adhesive bonding, as described in column 3, lines 5-8.

With respect to claim 12, Wu discloses the polymeric layer and the fibrous layer are combined by extrusion, as disclosed in column 6, lines 18-21.

With respect to claims 14 and 15, Dobrin discloses a baby diaper, as shown in figure 1.

With respect to claims 21 and 22, Dobrin discloses the polymeric layer 26 is a unitary layer extending both into the core and the chassis to form the backsheet material 95.

With respect to claim 23, Wu discloses the laminate has a basis weight of about 64 gsm (Table II), and the nonwoven web has a basis weight of about 20 gsm (column 4, line 29), and therefore the basis weight of the polymeric layer is greater than 25 gsm.

With respect to claim 24, Wu discloses the polymeric layer comprises a polymeric matrix and a particulate filler material, as disclosed in column 3, lines 35-38. With respect to claim 25, Wu discloses an activation process comprising passing the laminate through a roll pair comprising ridges and grooves, as shown in figure 2, to provide a multiplicity of grooves.

(10) Response to Argument

In response to the Appellant's argument that the Dobrin reference discredits all prior art vapor permeable liquid impermeable backsheets, and therefore it would not have been obvious to modify the article of Dobrin with the backsheet film of Wu, it is noted that Dobrin's disclosure in column 1, lines 47-50, is directed towards the prior art backsheets disclosed above in column 1, lines 31-46. None of the backsheet films disclosed by the prior art discussed by Dobrin, including the microporous film disclosed in U.S. Pat. No. 3,156,242, are equivalent in structure to the backsheet film taught by Wu. The backsheet film taught by Wu is a microporous film comprising a thermoplastic polymer and a pore-forming particulate filler, which offers the advantage of a film that is breathable while maintaining its liquid-barrier properties. None of the prior art cited by Dobrin in column 1, lines 31-46, disclose the backsheet film taught by Wu, and therefore Dobrin does not discredit, or teach away from, using the film of Wu as a backsheet for an absorbent article.

In response to the Appellant's argument that there appears to be no mention in the Wu reference that a film with apertures, as described in Dobrin, can be processed to add micropores, it is noted that Wu is employed as a teaching reference to provide a microporous film for the advantage of adding breathability while maintaining liquid-barrier properties. The backsheet of Dobrin in being modified, in light of the teaching of Wu, to include a microporous film. Dobrin discloses the backsheet film is apertured in its outer regions. Wu need not teach providing the microporous film with apertures, or

provided an apertured film with micropores. The backsheet of Dobrin, as modified by Wu, will comprise a microporous film that is apertured in its outer regions.

In response to the Appellant's argument that there appears to be no reasonable expectation of success for forming apertures in the microporous film of Wu, it is noted that the inclusion of a particulate filler and micropores do not prevent a film from being capable of having apertures formed therein. Wu discloses a formed film of thermoplastic polymers that is sufficiently thin for used in an absorbent article, and therefore is fully capable of being apertured.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

C. Lynne Anderson

/L. A./

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